

Agreement JPA File No.: 06-060  
AG Contract No.: P0012007001721  
Project: Operations & Maintenance  
Valley Light Rail Transit Project  
Section: Central Phoenix & East Valley

## JOINT PROJECT AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
VALLEY METRO RAIL INC.

**THIS OPERATIONS AND MAINTENANCE AGREEMENT** (the "O&M Agreement" or "Agreement"), entered into this date as of July 17th 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION ("ADOT") and VALLEY METRO RAIL, INC. ("VMR"), a corporation formed under the Arizona Nonprofit Corporation.

### RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
  2. VMR is empowered by Arizona Revised Statutes Act § 10-3101 and § 40-1152, is authorized to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the VMR.
  3. WHEREAS, VMR is presently designing and constructing the Central Phoenix/East Valley Light Rail Transit Project (the "Project") in the Central Phoenix and East Valley area as illustrated in Exhibit A;
  4. WHEREAS, once the Project and other similar light rail projects become operational, they become part of the light rail system ("System"); and,
  5. WHEREAS, VMR will be responsible for the operations and maintenance of the System;
  6. WHEREAS, VMR intends to utilize federal funds in part to design and construct the System;
  7. WHEREAS, the City of Phoenix is the grantee for the federal funds with a direct pass-through to VMR;
  8. WHEREAS, VMR's use of federal funds requires VMR to operate the System and provide a reasonable level of service to the public or default on the funding agreement;
-

9. WHEREAS, ADOT is the owner or controls various property rights and interests in certain streets, public ways, adjacent facilities, and parcels used by the System ("Occupied ADOT Property");

10. WHEREAS, ADOT has granted various permits granting VMR the right to use certain streets, public ways, facilities, and parcels used by the System;

11. WHEREAS, the Parties desire by this O&M Agreement to establish each party's role, responsibilities, and expectations regarding the operation and maintenance of the System and adjacent facilities;

12. WHEREAS, separate operations and maintenance Agreements will be entered into by VMR and the Cities of Tempe, Phoenix, and Mesa;

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**SECTION 1.0 DEFINITIONS:**

The following capitalized terms shall have the following meanings when used in this O&M Agreement, unless a different meaning is clearly intended:

"Adjacent Facilities" means the Facilities or property of one Party affixed to, adjacent to, above or under the Facilities or property of the other Party.

"ADOT" means the Arizona Department of Transportation, an agency of the State of Arizona.

"Board of Directors" or "Board" means the governing body of Valley Metro Rail, Inc as described in Exhibit B.

"Contract" means any contract or contracts, which VMR enters for the design, construction, operations, and/or maintenance of the System.

"Contractor" means any contractor who executes a Contract with VMR for the design, construction, operations, and/or maintenance of the System.

"Effective Date" means the date on which the O&M Agreement is in effect; see Section 2.

"Facilities" means something designed or created to provide a service or fulfill a need.

"Force Majeure" means any event which: (i) causes VMR to be unable to exercise the VMR Use Rights provided for hereunder; and (ii) is outside the reasonable control of VMR and could not be avoided by VMR through the exercise of due care. Force Majeure events include, without limitation: terrorists, earthquakes, fires, floods, tornadoes, wars, labor strikes or similar accidents, disputes or similar events.

"Maintenance" means the activities required to keep Facilities in a condition of good repair, of satisfactory performance or operation, and of cleanliness.

"Occupied ADOT Property" means property owned by ADOT, and permitted by ADOT to VMR for the System.

"Project" means the planning, design, financing, construction, and installation of the System. At the commencement of Revenue Operations, the Project becomes the System.

"Revenue Operations" or "Operations" means that the Project has been designed, constructed, and tested and is providing passenger service as intended.

“System” means any and all light rail facilities owned, operated, and maintained by VMR including all tracks, stations, park and rides, signs, light rail vehicles, conduits, electrical lines, traction power poles, traction power substations, cross-span wires, LRT traffic equipment, stray current protection equipment, and other functionally related and appurtenant equipment and facilities.

“System Alignment” means the alignment for the System.

#### **SECTION 2.0 EFFECTIVE DATE; TERM:**

The Effective Date of this O&M Agreement begins upon filing with the Secretary of State. Future expansions become included in this O&M Agreement upon application and written consent by ADOT. Beginning on the Effective Date, this O&M Agreement shall be operative for an indefinite period of time and to the maximum extent permitted by law.

#### **SECTION 3.0 CONSIDERATION:**

In consideration of the mutual promises, conditions, and covenants contained herein, VMR and ADOT agree as follows: VMR agrees to operate and maintain the System as set forth herein. VMR agrees to provide regular System service to the general public.

#### **SECTION 4.0 OPERATIONS:**

ADOT agrees to allow VMR to operate the System as described in Attachment B provided traffic progression is maintained to a reasonable level along city streets sharing the light rail and along major cross streets where ADOT maintains traffic coordination systems (except in an emergency situation as determined by ADOT). Operational disputes between VMR and ADOT shall be resolved jointly and elevated as described in Section 12.

#### **SECTION 5.0 MAINTENANCE:**

The System and all Occupied ADOT Property shall be maintained by VMR, except as otherwise provided in this O&M Agreement, subsequent permits, agreements, or easements. Attachment C defines the maintenance roles, responsibilities, and expectation of the Parties.

#### **SECTION 6.0 DESIGN APPROVAL:**

VMR agrees that ADOT has the right during the term of this O&M Agreement, to review and approve, conditionally approve, or deny all future additions, changes, and alterations to, and modifications and replacements of, any System improvements that would materially change the System. As used in this context, a material change is defined as a change that increases the amount of Occupied ADOT Property VMR needs to operate their system. This applies only to areas directly adjacent to ADOT facilities.

#### **SECTION 7.0 AGREEMENT NON-ASSIGNABLE:**

VMR may not assign or otherwise transfer any of its rights or obligations hereunder to a third party without the express prior written consent of ADOT, which may be granted or withheld by ADOT in its sole and absolute discretion. Any assignment or transfer without such prior written consent shall be void.

#### **SECTION 8.0 INDEMNIFICATION:**

VMR shall indemnify and hold harmless the State of Arizona, ADOT and its officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against claims, actions, liabilities, damages, and losses, (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), (1) arising out of the work done under the terms of this O&M Agreement, (2) or caused, by the negligence or willful acts or omissions of VMR or any of its owners, officers, directors, agents, or employees.

In addition, VMR shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of VMR's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

## **SECTION 9.0 INSURANCE:**

VMR will maintain and keep current an insurance policy with general minimum liability coverage as set forth in this O&M Agreement herein. Both the State and ADOT will be named as Additional Insured effective from the executed date of this O&M Agreement.

### **1. COMMERCIAL GENERAL LIABILITY - OCCURRENCE FORM**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	\$10,000,000
• Products – Completed Operations Aggregate	\$ 1,000,000
• Personal and Advertising Injury	\$ 1,000,000
• Blanket Contractual Liability – Written and Oral	\$ 1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$ 2,000,000

- a. The policy shall be endorsed to include the following additional insured language:

*"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the VMR".*

- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the VMR.

### **2. WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY**

<i>Workers' Compensation</i>	Statutory
<i>Employers' Liability</i>	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of VMR or its Contractors or Sub-contractors.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

### **3. ADDITIONAL INSURANCE REQUIREMENTS**

The policies are to contain, or be endorsed to contain, the following provisions:

- a. The State of Arizona, ADOT, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by VMR even if those limits of liability are in excess of those required by the O&M Agreement.
- b. VMR's insurance coverage shall be primary insurance with respect to all other available sources.
- c. VMR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by VMR shall not be limited to the liability assumed under the indemnification provisions of this O&M.

### **4. NOTICE OF CANCELLATION**

Each insurance policy required by the insurance provisions of this O&M shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **ADOT** at the following address:

Arizona Department of Transportation  
Intermodal Transportation Division  
Attn: JPA Administration  
205 South 17<sup>th</sup> Avenue  
Phoenix, Arizona 85007

### **5. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above required minimum insurer rating is sufficient to protect the VMR from potential insurer insolvency.

### **6. VERIFICATION OF COVERAGE**

VMR shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this O&M. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this O&M must be in effect at or prior to

commencement of work under this O&M and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this O&M, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this O&M shall be sent directly to **ADOT**. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

## **7. CONTRACTORS AND ANY SUB-CONTRACTORS**

VMR's certificate(s) shall include all contractors or sub-contractors as insureds under its policies or VMR shall furnish to the State of Arizona separate certificates for each contractor or subcontractor. All coverages for contractors or subcontractors shall be subject to the minimum requirements identified above.

## **8. APPROVAL**

Any modification or variation from the insurance requirements in any Agreement must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

## **9. EXCEPTIONS**

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

## **SECTION 10.0 DUTY TO RESTORE:**

Upon the expiration of this O&M Agreement, all System improvements located on Occupied ADOT Property shall, at the option of ADOT, be removed, and the Occupied ADOT Property shall be restored to a condition consistent with the then current condition of adjoining streets or other public Facilities with respect to grade, appearance, quality, finish, and type of construction, at the sole cost and expense of VMR. Restoration shall begin within ninety (90) days of such expiration or termination, or such longer period as shall be required by the nature of the work and as agreed to in writing by ADOT. If VMR fails to restore the Occupied ADOT Property as required herein, ADOT may perform such work after thirty (30) days prior written notice to VMR, and VMR hereby agrees to pay all costs of ADOT in connection with such work, including any collection costs and attorney's fees.

## **SECTION 11.0 DEFAULT:**

Either Party shall be deemed in default under this O&M Agreement upon the failure of a Party to observe or perform any material condition on its part to be observed or performed hereunder, and the continuance of such failure for a period of thirty (30) calendar days after the giving of written notice by the other Party, as required herein. The written notice shall specify the failure and request that it be remedied, unless the Party giving the notice agrees in writing to an extension of the time period prior to its expiration. If the failure stated in the notice cannot be corrected within the applicable time period, it shall not give rise to a default under this O&M Agreement if corrective action is instituted within the applicable time period and pursued until the failure is corrected.

## **SECTION 12.0 ISSUE RESOLUTION:**

Any dispute regarding the construction or interpretation of any provision of this O&M Agreement, or regarding any policy matter or the determination of an issue of fact shall be resolved using the following escalation ladder:

Issue Escalation Ladder		
Level	ADOT Representative	VMR Representative
First	District Engineer	Operations or Maintenance Manager
Second	Deputy State Engineer	Director, Operations and Maintenance
Highest Level	State Engineer	Chief Executive Officer

If the dispute is not resolved, it then will advance to arbitration per ARS 12-1518 as applicable.

### **SECTION 13.0 NOTICE:**

Any notice, consent, or other communication required or permitted under this O&M Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows: Either party may change its mailing address, FAX number, or the person to receive notice by notifying in writing the other party as provided in this Section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

Arizona Department of Transportation  
JPA Administration  
205 S. 17<sup>th</sup> Avenue  
Phoenix, Arizona 85007  
Telephone: (602) 712-7525  
Fax: (602) 712-7424

Valley Metro Rail, Inc.:  
Chief Executive Officer  
411 N. Central Avenue, Suite 200  
Phoenix, Arizona 85004  
Telephone: (602) 534-1807  
Fax: (602) 534-0879

### **SECTION 14.0 AMENDMENT:**

This O&M Agreement may be modified or amended only by a written instrument executed by the Parties and/or all of their successors or assigns, as applicable.

### **SECTION 15.0 NON-WAIVER:**

No covenant or condition of this O&M Agreement may be waived by any Party, unless done so in writing. Failure of a Party to assert any covenant or condition in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other.

### **SECTION 16.0 SEVERABILITY:**

If any provision of this O&M Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever.

### **SECTION 17.0 BINDING AGREEMENT:**

This O&M Agreement shall be binding upon all of the assigns, grantees and successors in interest to each of the Parties, and shall remain in full force and effect until amended as provided herein.

**SECTION 18.0 INCORPORATION OF ATTACHMENTS:**

This O&M Agreement includes Attachments A through C, all of which are incorporated herein by reference and made a part hereof. The Attachments of this O&M Agreement are as follows:

Attachment A System Map  
Attachment B Operations  
Attachment C Maintenance

**SECTION 19.0 MISCELLANEOUS PROVISIONS:**

1. VMR shall assume full responsibility and liability for the actions of VMR and be responsible for the operations of the System as they relate to this Agreement. The State assumes no financial obligation or liability under this Agreement. Nor does the State assume any responsibility for any operation and maintenance. The terms, conditions, and provisions of this Agreement shall remain in force and effect until completion of said Project. However, any provisions herein for maintenance provided by VMR shall be perpetual, it is understood and agreed to that in the event VMR terminates this Agreement, or fails to budget for the proper and perpetual maintenance set forth in this Agreement; the State shall in no way be obligated to maintain said Project within or outside of ADOT's right-of-way, this Agreement may be cancelled by either party with a (30) day written notice to the other party.

2. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by binding arbitration under the construction arbitration rules of the American Arbitration Association existing at the time of arbitration Arizona Revised Statutes § 12-1518.

6. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State and shall not be obligated or liable for any future payments in the event this provision is exercised as a result of termination under this paragraph.

8. Attached hereto and incorporated herein is the written determination of each parties legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.




**VALLEY METRO RAIL, INC.**

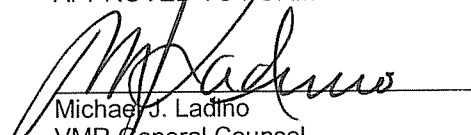
By   
RICHARD J. SIMONETTA  
Chief Executive Officer

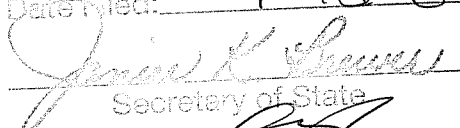

**STATE OF ARIZONA**

Department of Transportation

By   
SAM ELTERS, P.E.  
State Engineer

APPROVED TO FORM

  
Michael J. Ladino  
VMR General Counsel

NO. 29062  
Filed with the Secretary of State  
Date Filed: 7-16-07  
  
Secretary of State  
By: 

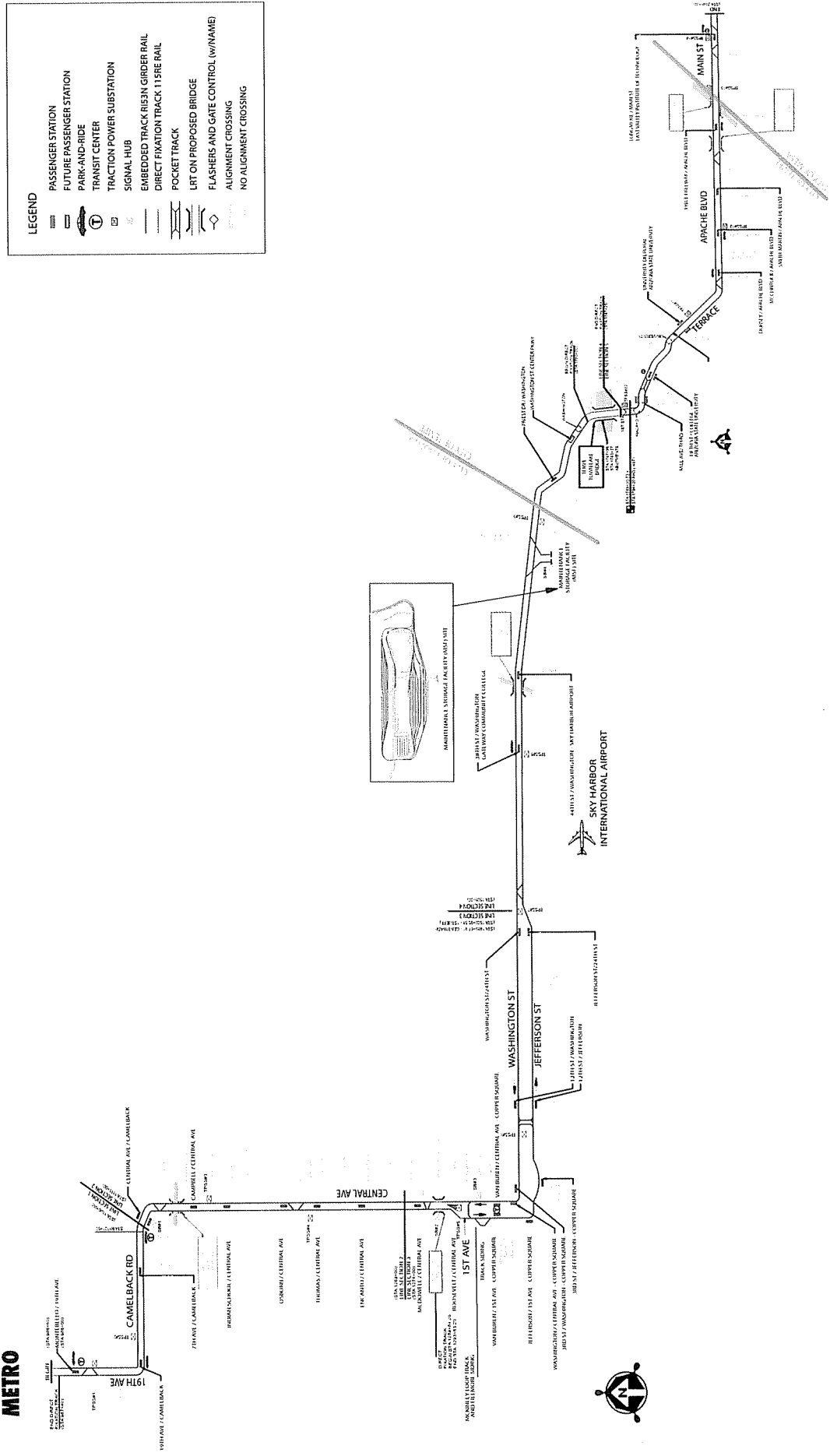
**ATTACHMENT A SYSTEM MAP**



CENTRAL PHOENIX / EAST VALLEY LIGHT RAIL PROJECT

EXHIBIT A

04-02-06



## ATTACHMENT B OPERATIONS

### 1.0 DEFINITIONS

The following capitalized terms shall have the meanings set forth below when used in Attachment B of the O&M Agreement. The terms defined in Section 1.0 of the O&M Agreement are incorporated into and made a part of Attachment B.

**"Fixed Guideway,"** means the supporting physical structure in or upon which light rail vehicles travel including any areas within 5 feet of any rail, associated structures, and equipment for LRT operation.

**"FLSSC"** means the Fire/Life Safety and Security Committee, a committee of state and local emergency response departments.

**"OCS"** means the overhead contact system or the overhead lines from which the light rail vehicles receive power.

**"VMR Guideway"** means an area defined by a boundary 7 feet from the centerline of each track see Figure 1.

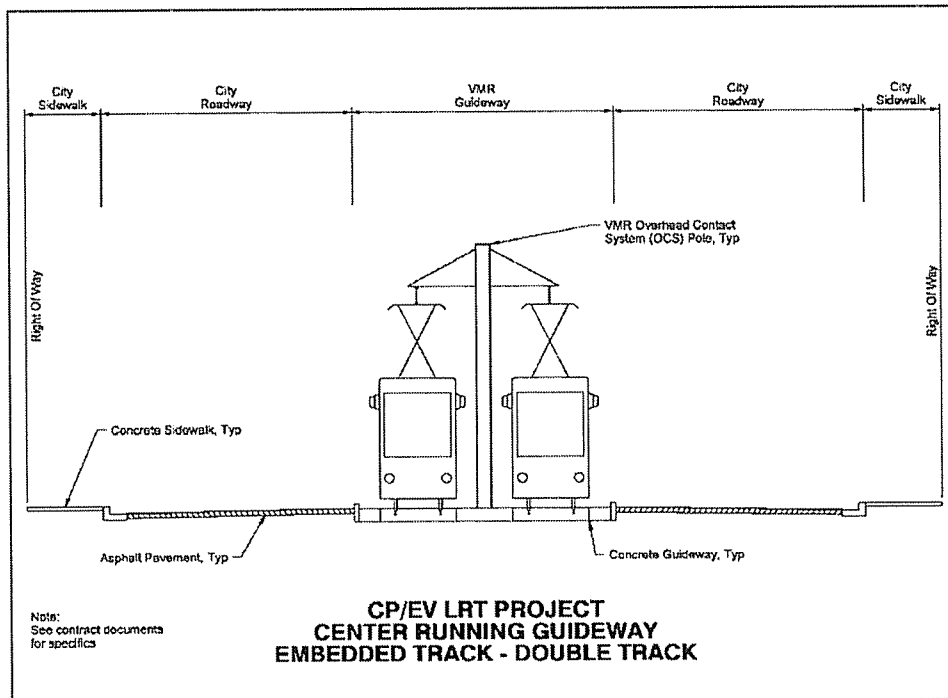


Figure 1 – VMR Guideway

### 2.0 VMR OPERATIONS

#### 2.1 System Operations

Valley Metro Rail is responsible for the operations of the System. Only VMR shall operate light rail vehicles and maintenance vehicles on the System.

All operation of the System shall be performed in accordance with an Operation and Maintenance Plan, which complies with all local, state, and federal traffic rules and regulations.

VMR will establish operating hours and headways based on service demands, train capacity, number of vehicles, and operating budgets.

VMR will work with local jurisdictions to develop and implement coordinated traffic and train control signal systems to optimize performance and level of service for both the train and vehicular traffic.

## **2.2 Minimize Impacts**

VMR will operate the System in a manner to minimize impacts to ADOT and other local jurisdictions notwithstanding operations shall meet the operational requirements of using federal funds.

## **2.3 System Expansion or Modification**

VMR agrees to follow ADOT's permit process when modifications are made to the System that are inconsistent with the intent of the initial permit authorization.

## **2.4 Access**

VMR agrees to contact ADOT when access to the System requires crossing ADOT right of way in areas not typically used for public travel. ADOT agrees to grant all reasonable access requests.

VMR will repair all damage caused by access.

## **3.0 ADOT OPERATIONS**

### **3.1 ADOT Facilities**

ADOT is responsible for the operations of ADOT Facilities.

### **3.2 ADOT Expansion or Modification**

ADOT agrees to minimize disruptions to VMR Facilities, where possible, in all future expansion or modification projects. When an expansion or modification project requires encroachment within the System corridor, ADOT agrees to confer and coordinate with VMR prior to entry or disruptions of VMR Facilities except in an emergency situation. *All flagging or construction monitoring required by VMR, due to an ADOT project, in an area where VMR is utilizing Occupied ADOT Property, VMR shall bear the costs. All flagging or construction monitoring required by VMR, where VMR is not on Occupied ADOT Property, ADOT shall bear the costs.*

### **3.3 Access**

ADOT agrees to provide VMR a minimum of (24) twenty hour notice for all non-emergency maintenance repairs requiring access to the VMR guideway in locations the VMR guideway is on ADOT property. ADOT agrees to follow VMR's safety guidelines during service periods to ensure safety for ADOT personnel, and minimize service disruptions for the public.

## **4.0 FIRE/LIFE/SAFETY AND SECURITYCOORDINATION**

### **4.1 General**

It is understood and agreed by ADOT and VMR that the Occupied ADOT Property shall not be considered or treated as a designated primary emergency response route, a detour for traffic, throughway, or a short cut. ADOT may, at their discretion, utilize any existing roadway, intersection, or interchange that has light rail traversing through it as a designated primary emergency response route, a detour for traffic, or a throughway.

VMR agrees to notify ADOT and will coordinate notifications and emergency response to incidents that occur on or adjacent to the light rail system on or near ADOT property. ADOT agrees to notify VMR

and will coordinate notifications and emergency response to incidents that occur adjacent to the light rail system.

#### **4.2 Fire/Safety Committee**

The FLSSC consists of representatives of VMR, ADOT, state, and local jurisdiction emergency response, and Department of Homeland Security. These representatives shall have the authority to make decisions in the areas of emergency response, fire/life safety, and security. The FLSSC meets on a monthly basis to discuss and plan activities requiring interface between state and local emergency response departments. VMR shall chair the FLSSC.

#### **4.3 Emergency Procedures**

An emergency procedure shall be developed by VMR consistent with the requirements defined in National Fire Protection Association 130 (NFPA 130) – Fixed Guideway Transit Systems, Chapter 6 and other applicable guidelines and regulations.

The emergency procedure will be reviewed and coordinated with and approved by state and local emergency response departments.

#### **4.4 Emergency Drills**

Emergency response drills will be conducted at periodic intervals as defined by NFPA 130, Chapter 6. VMR will plan and conduct drills in coordination with appropriate emergency response organizations through the FLSSC.

#### **4.5 Emergency Access**

The Occupied ADOT Property will be available for emergency use upon contact with VMR's Control Center.

At the request of the emergency response official or his designee in charge at the location of an incident, VMR personnel will remove power from the overhead contact system (OCS).

Procedures for removing and restoring power will be consistent with NFPA 130 (2003), Chapter 10. Detailed procedures will be developed by VMR and coordinated with the FLSSC. Prior to start of revenue service, VMR will provide training to ADOT emergency response personnel to enable the emergency personnel to confirm that power has actually been removed.

VMR and ADOT emergency response personnel will work cooperatively to minimize the frequency that power is removed and emergency response vehicles are stopped in the Occupied ADOT Property, and to minimize any other blockage of the Occupied ADOT Property that may occur.

Any emergency condition that may affect operations or public safety that comes to the knowledge of ADOT forces or any actual emergency response action along the Occupied ADOT Property shall be reported immediately to the VMR Control Center. Likewise, any emergency condition on an ADOT facility that may affect operations or public safety that comes to the knowledge of VMR forces, or any actual emergency response action along an ADOT street, corridor, or facility including portions in the operational thoroughway initiated by VMR forces shall be reported immediately to ADOT or appropriate state contact.

#### **5.0 POLICE/SECURITY**

VMR will provide security for passengers on trains, at stations, on the System, and at other VMR Facilities at a level and using a means, that VMR determines is appropriate. VMR shall also enforce its fare collection responsibilities.

Interface between VMR and the state regarding security procedures for the System will be coordinated through the FLSSC meetings.

Nothing in this section shall be deemed to restrict state and local police powers, as authorized by state and local laws.

## **6.0 DISPLAYS AND SPECIAL EVENTS**

VMR and ADOT both understand that movement by light rail vehicles and pedestrian and traffic flow along the Occupied ADOT Property is of primary importance.

### **6.1 Within the LRT Guideway**

No displays or attachments, unrelated to System or ADOT operations, will be placed within, over, or on facilities within the LRT Guideway including, but not limited to OCS poles, traffic signal poles, station platforms, or pedestrian signal poles.

### **6.2 Outside the LRT Guideway**

ADOT shall be responsible for issuing permits for display of non-operational materials on joint use poles or other System facilities outside the LRT Guideway.

Under no circumstances will a permit be issued by ADOT for any activity, event, display or attachment that would in any way interfere with the safe operation or maintenance of the System. VMR will notify ADOT when the safe operation or maintenance of the System has been compromised. Should some type of display or attachment interfere with the safety of the system ADOT will allow VMR to remove the display or attachment as agreed to.

Permits shall clearly identify the limits of installation and activity in detail and include: (1) a scaled diagram of all proposed displays and attachments with specific dimensions incorporated into the diagram, (2) an identification of the timeframes for installation, (3) a description of the manner and methods of installation (including all tools and equipment intended to be utilized and the manner of utilization), (4) and the display interval and activity interval. VMR has the right to perform the installation and removal of any such display on or attachment to its OCS poles. Cost reimbursement for installation/removal will be detailed by VMR on permit.

The permit shall require the permittee to notify the VMR Operations Control Center, ADOT, and any other persons required by the permit to be notified before commencing any activity under the permit.

### **6.3 Special Events**

VMR and ADOT shall work together to coordinate Special Events. Special Events are defined as those events occurring within the public way, for a purpose, and controlled by the ADOT through a permit process.

Permit requests for Special Events crossing the LRT Guideway or occurring directly adjacent to the LRT Guideway, shall be reviewed by both VMR and ADOT. In these situations, VMR shall have an active role in the permit approval.

## **ATTACHMENT C MAINTENANCE**

### **1.0 DEFINITIONS**

The following capitalized terms shall have the meanings set forth below when used in Attachment C of the O&M Agreement. The terms defined in Section 1.0 of the O&M Agreement and Attachment B of the O&M Agreement are incorporated into and made a part of Attachment C.

"Days" means calendar days.

"Maintenance – Programmed" means Maintenance activities performed on a routine, frequent, or scheduled basis on items requiring recurring maintenance.

"Maintenance – Non-Programmed" means major maintenance activities performed on an irregular, infrequent, or unscheduled basis.

"Maintenance – Emergency" means a major maintenance activity performed on an immediate response basis to restore the intended daily operational conditions of the System, which generally results from unintended or unusual conditions that may cause an actual emergency or a potential emergency.

"Maintenance" means either Programmed, Non-Programmed, or Emergency Maintenance.

"Occupied ADOT Property," means property owned by ADOT, used by VMR for the System, granted through either permit or easement.

"VMR Guideway" means an area defined by a boundary generally 7 feet from the centerline of each track see Figure 1.

### **2.0 GENERAL**

The System and Occupied ADOT Property shall be reasonably maintained by VMR in a manner consistent with this Agreement, with ADOT standards, and as governed by applicable state or federal law. The System and Occupied ADOT Property shall be maintained in a neat, clean, and orderly condition. Without limiting the foregoing, VMR shall keep the Occupied ADOT Property free of weeds, trash, garbage, and unsightly or deleterious objects or structures, and shall keep the System and all Occupied ADOT Property free from graffiti.

VMR may perform maintenance activities without restriction as long as the work does not require blocking or impeding roadway traffic or require access through property other than Occupied ADOT Property and which are not in conflict with state or federal law. VMR will obtain a permit as required by ADOT for all other maintenance activities other than repairs associated with a bona fide emergency.

VMR or its contractors shall be responsible for obtaining any necessary permits or other approvals required by ADOT prior to beginning the maintenance, repair, or improvement work.

### **3.0 PROTECTION OF ADJACENT FACILITIES**

VMR and ADOT agree to notify each Party before performing maintenance work in and around Adjacent Facilities. Notice shall be per the guidelines established in Section 4.0 – Notice. Adjacent Facilities shall be reasonably protected when maintenance activities are occurring.

If, through installation, use, or maintenance, the Adjacent Facility is disturbed or damaged, the Party responsible will, at its own expense, and in a manner acceptable to the owner, restore or repair the facility in as good a condition as before such damage or disturbance.

If such restoration, repair, or replacement is not completed within a reasonable time, or such repair or replacement does not meet the owner's duly adopted standards, the owner shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired



contractor. The non-compliant party shall reimburse the owner for its expenses in so doing within thirty (30) days after receipt of invoice therefore.

#### 4.0 **NOTICE AND APPROVALS**

Notice of maintenance work performed by VMR or ADOT is as follows:

<b>Valley Metro Rail Maintenance Activities</b>				
<b>Type of Work</b>	<b>Examples</b>	<b>Required Notice</b>	<b>Approval Timeframe</b>	<b>Notes</b>
Routine	<ul style="list-style-type: none"> <li>*Inspections</li> <li>*Replacement of bulbs and lenses in signals</li> <li>*Cleaning</li> <li>*Switch adjustments</li> <li>*Replacement of soffit lights over trackway, accessed from within guideway</li> </ul>	None	Not Applicable	All work must be within Occupied ADOT Property and cannot block or impede ADOT operations.
Non-Routine	<ul style="list-style-type: none"> <li>*Renewal of track surface at grade crossings or intersections</li> <li>*Repair of OCS above streets or public right of way</li> <li>*Repair of clearance signage</li> </ul>	<ul style="list-style-type: none"> <li>*7 days written notification</li> <li>*Notify ADOT immediately prior to commencement of work</li> </ul>	<p>ADOT will address initial notice within 7 days</p> <p>ADOT will provide verbal approval to start work at initiation</p>	VMR will comply with ADOT traffic control guidelines when working outside the Occupied ADOT Property.
Emergency	<ul style="list-style-type: none"> <li>*Repair work required to operate the System</li> <li>*Structural failure of facility</li> <li>*De-Railed vehicle</li> <li>*Repair of fallen OCS wire</li> <li>*Stalled vehicle within the guideway</li> </ul>	<ul style="list-style-type: none"> <li>*Notify ADOT prior to commencement of work</li> </ul>	ADOT will provide verbal approval	VMR agrees to address emergency expeditiously and to renew roadway traffic within a reasonable timeframe. Non-emergency repairs will be scheduled as Non-Routine.

ADOT Maintenance Activities				
Type of Work	Examples	Required Notice	Approval Timeframe	Notes
Outside of Occupied ADOT Property	*Bridge Inspections *Bridge Rehabilitation *Signals *Cleaning *Lights *Signs *Misc. maintenance	None	Not Applicable	All work must be outside of the Occupied ADOT Property and cannot interfere with VMR operations.
Within Occupied ADOT Property	*Bridge Inspections *Bridge Rehabilitation *Signals *Cleaning *Lights *Signs *Misc. maintenance	*7 days written notification  *Notify VMR immediately prior to commencement of work	VMR will address initial notice within 7 days  VMR will provide verbal approval to start work at initiation	ADOT will comply with VMR's procedures for working in and around an operating light rail system.
Emergency	*Traffic Accident *Structural failure of facility	*Notify VMR prior to commencement of work	VMR will provide verbal approval	ADOT agrees to address the emergency expeditiously and to renew VMR's ability to operate within a reasonable timeframe. Non-emergency repairs will be scheduled.

Written notice to VMR shall be to or as:  
otherwise directed:

Valley Metro Rail  
C/o Director of Rail Operations  
411 N. Central Avenue  
Phoenix, AZ 85004

Written notice to ADOT shall be to or as  
otherwise directed

Arizona Department of Transportation  
C/o Phoenix Maintenance (MD) PM00  
2140 W. Hilton Avenue  
Phoenix, AZ 85009-6988

Verbal notice to VMR shall be to the VMR Control Center:

Verbal notice to ADOT shall be to as  
other otherwise directed:  
Phone: (602) 712-6550  
Fax: (602) 712-6983

## 5.0 MAINTENANCE RESPONSIBILITIES

In general, VMR's maintenance responsibilities extend to all light rail improvements located within the Occupied ADOT Property, as that term is defined above, and identified in Table C-1. VMR will be responsible for all Facilities designed, implemented, and constructed for light rail operations.

VMR's maintenance responsibilities shall include the maintenance of all Facilities within the VMR Guideway; see Figure 1, Attachment B, and Facilities in direct support of VMR's operations. These Facilities include but are not limited to the rail and all appurtenances, trackslab, switch machines, and track drains to the point of connection to drainage trunk lines, the train signal system, and the traction power system including poles, foundations, wires, and hangars.

VMR is responsible for the OCS supports attached to ADOT bridges not including any bridge elements other than the soffit lights over the guideway. Also included are retaining walls used to retain materials above or under the trackslab, artwork on retaining walls, and retaining wall drains, station platforms and all station platform elements including canopies, drinking fountains, benches, landscaping, and ticket vending machines.

VMR is responsible for signage directing the public to transit, signage on the platforms, and warning signage for height clearance, and all other signage related to light rail transit.

VMR is responsible for the maintenance activities of park and rides including the pavement, striping, landscaping, irrigation, fencing, artwork, restrooms, and all other elements associated with the park and ride Facilities.

ADOT is responsible for maintaining Facilities unrelated to the light rail system unless defined otherwise within this Agreement.

<b>Table C-1 Maintenance Responsibilities</b>		
<b>Subject</b>	<b>Responsible Agency</b>	
	<b>VMR</b>	<b>ADOT</b>
<b>Trackway</b>		
Rail, rail boot, and flangeway	x	
Trackslab surface	x	
Asphalt or Concrete Paving with VMR Guideway	x	
Special Trackwork (incl. switches, turnouts, etc.)	x	
<b>Signaling and Control</b>		
Train Signals	x	
Switch control cabinets	x	
Intersection traffic signals (as applicable)	x	x
<b>Structures</b>		
LRT Bridges (exclusive for VMR Guideway)		
Bridge, all inclusive	x	
ADOT Bridges w/ LRT on Bridge		
Bridge Structure		x
OCS wires, poles, and bolts	x	
Expansion Joints		x
Rail Facilities on Bridge	x	
Lights on Bridge		x
ADOT Bridges w/ LRT under Bridge		
Soffit Lights over VMR Guideway	x	
Soffit Lights outside VMR Guideway		x
Bridge Structure		x
OCS wires, supports, poles, and bolts as appropriate	x	
Rail Facilities	x	
<b>Traction Power System</b>		
OCS Poles and Foundations	x	
OCS Wires, Brackets, and Hangars	x	
Traction Power Substations and Associated Site	x	
<b>Corridor Areas (non-bridge, non-roadway)</b>		
Retaining Walls (supporting VMR Guideway)	x	
Retaining Walls		x
Fencing (defining Occupied ADOT Property)	x	
Fencing		x
General Maintenance (within Occupied ADOT Property)	x	
General Maintenance		x

<b>Park and Ride Facilities</b> All Facilities	x	
<b>Signs</b> LRT Signage Park and Ride Signage Sign Bridges over LRT Guideway	x x x	  x

#### **6.0 REMEDY**

If either Party fails to perform the maintenance responsibilities defined in this Agreement, written notice will be provided detailing the maintenance deficiency.

If the maintenance is not started within thirty (30) days after written notice is received, the other Party has the right to perform such maintenance or repairs, as it reasonably deems necessary, not inconsistent with the source of the requirement or with City, state, or federal law or regulation, pursuant to said notice.

For such work, the non-compliant Party shall entirely reimburse the Party accomplishing the work for all costs, including, but not limited to personnel and administration costs and expenses within sixty (60) days of receipt of invoice.

The non-compliant Party will pay any reasonable costs or expenses incurred in collecting such maintenance costs and expenses, including attorney's fees.

#### **7.0 SAFETY**

ADOT shall be responsible for assuring that key ADOT personnel or its contractors, when working in or around the VMR Guideway are certified by VMR in proper safety procedures prior to entering the VMR Guideway. Certification tags or other identification will be issued to certified personnel and shall be carried at all times while at the work site. VMR shall provide safety training and instruction to such personnel and contractors at periodic intervals not to exceed one year. Safety training and instruction will be provided by VMR within thirty (30) days after notice at VMR's Facilities.

#### **8.0 REPAIR RESPONSE TIME**

ADOT and VMR agree to work cooperatively to expedite emergency repairs, in the most timely manner possible.

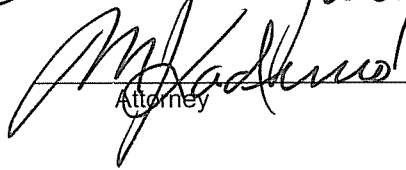
JPA 06-060

**ATTORNEY APPROVAL FORM FOR**  
**VALLEY METRO RAIL, INC.**

I have reviewed the above referenced O&M Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and VALLEY METRO RAIL, INC., and declare that this Agreement is within the powers and authority granted to VALLEY METRO RAIL, INC., under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 2<sup>nd</sup> day of July, 2007

  
Attorney